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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANTHONY E. GARVER,

Defendant.

CR-06-113-WFN

United States' Memorandum in
Support of Motion for
Disclosure of Grand Jury
Material

Plaintiff, United States of America, by and through James A. McDevitt,
United States Attorney for the Eastern District of Washington, and Joseph H.
Harrington, Assistant United States Attorney for the Eastern District of
Washington, submits the following memorandum in support of its motion for an
order permitting disclosure of grand jury material in this case.

The general secrecy requirements of the grand jury are contained in Federal
Rule Criminal Procedure 6(e). Fed. R. Crim. P. 6(e)(2) provides that:

Unless these rules provide otherwise, the following persons must not
disclose a matter occurring before the grand jury:

- (i) a grand juror;
- (ii) an interpreter;
- (iii) a court reporter;
- (iv) an operator of a recording device;
- (v) a person who transcribes recorded testimony;
- (vi) an attorney for the government; or
- (vii) a person to whom disclosure is made under Rule
6(e)(3)(A)(ii) or (iii).

Fed. R. Crim. P. 6(e)(3)(E) provides that:

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Material - 1

1 The court may authorize disclosure -- at a time, in a manner, and
2 subject to any other conditions that it directs -- of a grand jury matter:

3 (I) preliminarily to or in connection with a judicial
4 proceeding;

5 There is a split in the Circuit Courts of Appeal as to whether documents
6 subpoenaed by the grand jury are even considered secret as "matters occurring
7 before the grand jury." United States v. Dynavac, 6 F.3d 1407 (9th Cir. 1993) and
8 cases cited therein. In Dynavac business records which were independently
9 generated and existed outside the grand jury investigation were not considered
10 matters occurring before the grand jury. The crucial question seems to be whether
11 the disclosure would compromise the integrity of the grand jury's deliberative
12 process. Id. at 1414. Even then, disclosure is permitted if the defendant's need for
13 the material outweighs the continuing need for secrecy.

14 However, the prosecutor is allowed to introduce and disclose grand jury
15 material at the change of plea hearing and at trial without any prior court order
16 allowing disclosure. United States v. Manglitz, 773 F.2d 1463 (4th Cir. 1985).
17 But disclosure at that time will not facilitate the defendant's preparation for trial in
18 this case.

19 Moreover, Fed. R. Crim. P. 16(a)(1)(C) provides for the defendant's pretrial
20 discovery of documents which are material to the preparation of the defendant's
21 defense or are intended for use by the government as evidence in chief at trial.
22 Defendants may find some of the documents material to their case and many of the
23 documents are intended for use by the government at trial.

24 At the same time, 18 U.S.C. § 3500 requires the United States to provide a
25 witness' prior statement to the defense. This includes statements made to the grand
26 jury. 18 U.S.C. § 3500(e)(3).

27 Therefore, the United States requests a court order allowing the United
28 States to disclose documents subpoenaed by the grand jury, including the sealed

1 documents from Spokane County Superior Court Proceeding in Re: The
2 Involuntary Treatment of Anthony Garver, Cause No. 04-00806-8, and medical
3 records from the Eastern State Hospital relating to Anthony E. Garver, to the
4 Defendant and his attorney "preliminary to" and "in connection with" this criminal
5 prosecution to allow the Defendant to prepare for trial.

6 DATED November 13, 2006.

7 James A. McDevitt
United States Attorney

8 *s/Joseph H. Harrington*

9 Joseph H. Harrington
10 Assistant United States Attorney
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1 I hereby certify that on November 13, 2006, I electronically filed the
2 foregoing with the Clerk of the Court using the CM/ECF System which will send
3 notification of such filing to the following, and/or I hereby certify that I have
4 mailed by United States Postal Service the document to the following non-
5 CM/ECF participant(s):

6
7 Ms. Christina L. Hunt
8 Federal Defenders of Eastern Washington
9 10 North Post, Suite 700
10 Spokane, Washington 99201

11 *s/Joseph H. Harrington*

12 Joseph H. Harrington
13 Assistant United States Attorney
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